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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

CLYDE PRICE,

Plaintiff,

v.

KEN CLARK, et al.,

Defendants.

CASE NO. 1:09-cv-01393-SKO PC

ORDER DISMISSING CLAIMS FOR FAILURE TO STATE A CLAIM

(Doc. 14)

Plaintiff Clyde Price ("Plaintiff") is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff is in the custody of the California Department of Corrections and Rehabilitation ("CDCR") and is incarcerated at the California Substance Abuse Treatment Facility ("CSATF") in Corcoran, California. Plaintiff is suing under Section 1983 for the violation of his rights under the Eighth Amendments. Plaintiff names Ken Clark (warden), Garza (correctional sergeant), Cable (correctional officer), Gonzalez (correctional officer), John and Jane Doe maintenance staff, and John and Jane Doe medical staff as defendants ("Defendants"). Plaintiff has consented to jurisdiction by U.S. Magistrate Judge. (Doc. #7.)

For the reasons set forth below, the Court finds that Plaintiff fails to state any claims upon which relief can be granted under Section 1983. Since Plaintiff has previously been informed of the deficiencies in his claims, the Court finds that further leave to amend would be futile. Accordingly, Plaintiff's claims will be dismissed with prejudice.

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1 **I. Screening Requirement**

2 The Court is required to screen complaints brought by prisoners seeking relief against a  
3 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The  
4 Court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally  
5 “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek  
6 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1), (2).

7 In determining whether a complaint fails to state a claim, the Court uses the same pleading  
8 standard used under Federal Rule of Civil Procedure 8(a). Under Rule 8(a), a complaint must  
9 contain “a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed.  
10 R. Civ. P. 8(a)(2). “[T]he pleading standard Rule 8 announces does not require ‘detailed factual  
11 allegations,’ but it demands more than an unadorned, the-defendant-unlawfully-harmed-me  
12 accusation.” Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009) (quoting Bell Atlantic Corp. v.  
13 Twombly, 550 U.S. 544, 555 (2007)). “[A] complaint must contain sufficient factual matter,  
14 accepted as true, to ‘state a claim to relief that is plausible on its face.’” Id. (quoting Twombly, 550  
15 U.S. at 570). “[A] complaint [that] pleads facts that are ‘merely consistent with’ a defendant’s  
16 liability . . . ‘stops short of the line between possibility and plausibility of entitlement to relief.’” Id.  
17 (quoting Twombly, 550 U.S. at 557). Further, although a court must accept as true all factual  
18 allegations contained in a complaint, a court need not accept a plaintiff’s legal conclusions as true.  
19 Id. “Threadbare recitals of the elements of a cause of action, supported by mere conclusory  
20 statements, do not suffice.” Id. (quoting Twombly, 550 U.S. at 555).

21 **II. Background**

22 **A. Procedural Background**

23 Plaintiff filed the original complaint in this action on August 10, 2009. (Doc. #1.) The Court  
24 screened Plaintiff’s original complaint on December 31, 2009. (Doc. #9.) The Court found that  
25 Plaintiff’s original complaint failed to state any cognizable claims for relief. The Court informed  
26 Plaintiff of the deficiencies in his claims and granted leave to file an amended complaint. Plaintiff  
27 filed his first amended complaint on February 26, 2010. (Doc. #14.) This action proceeds on  
28 Plaintiff’s first amended complaint.

1           **B.     Factual Background**

2           Plaintiff alleges that he was injured while being transported to a medical appointment outside  
3 the prison. Plaintiff was transported to his appointment on October 19, 2007, by Defendants Cable  
4 and Gonzalez. Plaintiff contends that he climbed into the transportation van using a milk crate as  
5 a step stool because the van’s step ladder was missing. Plaintiff allegedly told Cable and Gonzalez  
6 that the plastic milk crate would not be strong enough to support Plaintiff’s weight. Cable and  
7 Gonzalez ignored Plaintiff’s complaints and Plaintiff used the milk crate to get into the van.

8           However, when Plaintiff arrived at his appointment and used the milk crate a second time  
9 to exit the van, the crate slipped and Plaintiff fell. Plaintiff’s injuries were exacerbated because  
10 Plaintiff was shackled and could not protect himself from the impact of the fall. Plaintiff claims that  
11 he suffered excruciating pain on the right side of his head, neck and lower back and suffered  
12 abrasions on his arms and legs. Plaintiff contends that using the plastic milk crate as a step stool  
13 violated Plaintiff’s Eighth Amendment rights.

14           Plaintiff was taken to the medical center without any assistance while in restraints. The staff  
15 at the medical center took x-rays of Plaintiff’s back. Plaintiff complains that he did not receive an  
16 MRI. Although Plaintiff received a shot after complaining about the pain, he contends he was not  
17 given a neck collar, back brace, or medication. Plaintiff further contends that he did not receive any  
18 further medical appointments for the injuries. Plaintiff argues that the limited treatment that he  
19 received by the staff at the medical center violated Plaintiff’s Eighth Amendment rights.

20           **III.   Discussion**

21           **A.     Milk Crate Claims**

22           Plaintiff contends that the use of a milk crate as a step stool violated his rights under the  
23 Eighth Amendment.

24           The Eighth Amendment prohibits the imposition of cruel and unusual punishments and  
25 “embodies ‘broad and idealistic concepts of dignity, civilized standards, humanity and decency.’”  
26 Estelle v. Gamble, 429 U.S. 97, 102 (1976) (quoting Jackson v. Bishop, 404 F.2d 571, 579 (8th Cir.  
27 1968)). A prison official violates the Eighth Amendment only when two requirements are met: (1)  
28 the objective requirement that the deprivation is “sufficiently serious,” and (2) the subjective

1 requirement that the prison official has a “sufficiently culpable state of mind.” Farmer v. Brennan,  
2 511 U.S. 825, 834 (1994) (quoting Wilson v. Seiter, 501 U.S. 294, 298 (1991)).

3 The objective requirement that the deprivation be “sufficiently serious” is met where the  
4 prison official’s act or omission results in the denial of “the minimal civilized measure of life’s  
5 necessities.” Id. (quoting Rhodes v. Chapman, 452 U.S. 337, 347 (1981)). The subjective  
6 “sufficiently culpable state of mind” requirement is met when a prison official acts with “deliberate  
7 indifference” to inmate health or safety. Id. (quoting Wilson, 501 U.S. at 302-303). A prison official  
8 acts with deliberate indifference when he or she “knows of and disregards an excessive risk to inmate  
9 health or safety.” Id. at 837. “[T]he official must both be aware of facts from which the inference  
10 could be drawn that a substantial risk of serious harm exists, and he must also draw the inference.”

11 Id.

12 Plaintiff contends that the use of a milk crate as a step stool constitutes cruel and unusual  
13 punishment. He contends that the milk crate presented an excessive risk to Plaintiff’s health and  
14 safety because it could not support Plaintiff’s weight. The Court disagrees.

15 The Court finds that the risk presented by a plastic milk crate is not “sufficiently serious” to  
16 fall within the realm of an Eighth Amendment claim. Although Plaintiff claims to have suffered  
17 injury because the milk crate slipped, there is nothing in Plaintiff’s complaint that suggests that the  
18 incident was anything more than a highly unusual accident. Even though Plaintiff describes the  
19 warnings he allegedly voiced to Defendants Cable and Gonzalez and the “sounds of cracking and/or  
20 breaking as soon as plaintiff stood completely on the crate getting into the van,” (Am. Compl. 7:10-  
21 12, ECF No. 14), the Court finds that the risk of injury from stepping on the milk crate was not so  
22 great or so obvious that it would violate the Constitution. See Helling v. McKinney, 509 U.S. 25,  
23 36 (1993) (“prisoner must show that the risk of which he complains is not one that today’s society  
24 chooses to tolerate”).

25 Using a plastic milk crate as a step stool does not constitute cruel and unusual punishment.  
26 Accordingly, Plaintiff fails to state any cognizable claims against Defendants for using a plastic milk  
27 crate as a step stool.

1           **B. Medical Treatment Claims**

2           Plaintiff also claims that the treatment he received at the medical center violated the Eighth  
3 Amendment. “[D]eliberate indifference to a prisoner’s serious illness or injury states a cause of  
4 action under § 1983.” Estelle, 429 U.S. at 105. To state an Eighth Amendment claim based on  
5 deficient medical treatment, a plaintiff must show: (1) a serious medical need; and (2) a deliberately  
6 indifferent response by the defendant. Conn v. City of Reno, 572 F.3d 1047, 1055 (9th Cir. 2009)  
7 (quoting Jett v. Penner, 439 F.3d 1091, 1096 (9th Cir. 2006)). A serious medical need is shown by  
8 alleging that the failure to treat the plaintiff’s condition could result in further significant injury, or  
9 the unnecessary and wanton infliction of pain. Id. A deliberately indifferent response by the  
10 defendant is shown by a purposeful act or failure to respond to a prisoner’s pain or possible medical  
11 need and harm caused by the indifference. Id. To constitute deliberate indifference, there must be  
12 an objective risk of harm and the defendant must have subjective awareness of that harm. Id.  
13 However, “a complaint that a physician has been negligent in diagnosing or treating a medical  
14 condition does not state a valid claim of medical mistreatment under the Eighth Amendment.  
15 Medical malpractice does not become a constitutional violation merely because the victim is a  
16 prisoner.” Estelle v. Gamble, 429 U.S. 97, 106 (1976). Isolated occurrences of neglect do not  
17 constitute deliberate indifference to serious medical needs. See Jett v. Penner, 439 F.3d 1091, 1096  
18 (9th Cir. 2006); McGuckin v. Smith, 974 F.2d 1050, 1060 (9th Cir. 1992); O’Loughlin v. Doe, 920  
19 F.2d 614, 617 (9th Cir. 1990).

20           Plaintiff contends that the medical treatment he received from the John and Jane Doe medical  
21 staff violated the Eighth Amendment.<sup>1</sup> The Court disagrees. Plaintiff received x-rays and a shot for  
22 his pain from the medical staff. Plaintiff complains that he did not receive an MRI but does not  
23 allege what an MRI would have accomplished. Plaintiff does not allege that he suffered any further  
24 serious injury because he did not receive an MRI. Plaintiff alleges that he did not receive a neck  
25 collar or back brace, but fails to allege that it caused any further serious injury. Plaintiff further  
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27           <sup>1</sup>It is unclear whether the John and Jane Doe medical staff defendants are the medical staff at the medical  
28 center outside the prison, or whether Plaintiff is attempting to sue other medical staff members who work at the  
prison. In either case, the Court finds that Plaintiff’s complaint fails to state a claim.

1 contends that he was not prescribed pain medication. As Plaintiff was given a shot for his pain, the  
2 Court finds that the failure to give Plaintiff pain medication does not amount to deliberate  
3 indifference. Plaintiff has not alleged any facts to suggest that the failure to provide Plaintiff with  
4 medication was a deliberate attempt to keep him in pain.

5 Finally, Plaintiff contends that he was not given any follow-up appointments for treatment,  
6 but fails to allege how the John and Jane Doe medical staff were responsible for scheduling follow-  
7 up appointments. Plaintiff also fails to clearly identify why he needed a follow-up appointment.  
8 Nothing in Plaintiff's complaint suggests that the failure to schedule a follow-up appointment was  
9 deliberately indifferent.

10 Plaintiff was x-rayed and diagnosed by the staff at the medical clinic. Plaintiff does not  
11 allege that the staff discovered any serious injuries such as broken bones or anything else that would  
12 warrant follow-up treatment. There is nothing in Plaintiff's complaint that plausibly supports the  
13 conclusion that any Defendants were aware of a serious risk of further injury if Plaintiff did not  
14 receive follow-up treatment, an MRI, a neck collar, a back brace, or pain medication. Plaintiff fails  
15 to state any cognizable claims related to his medical treatment.

16 **C. No Leave to Amend**

17 The Court's previous screening order informed Plaintiff of the deficiencies in his Eighth  
18 Amendment claims. Plaintiff's first amended complaint fails to amend his claims in a way that  
19 meaningfully addresses those deficiencies. The Court finds that Plaintiff's claims are not capable  
20 of being cured by granting further leave to amend. Plaintiff's claims will be dismissed with  
21 prejudice. See Lopez v. Smith, 203 F.3d 1122, 1127 (9th Cir. 2007) (recognizing longstanding rule  
22 that leave to amend should be granted even if no request to amend was made unless the court  
23 determines that the pleading could not possibly be cured by the allegation of other facts); Ferdik v.  
24 Bonzelet, 963 F.2d 1258, 1261 (9th Cir. 1992)(dismissal with prejudice upheld where court had  
25 instructed plaintiff regarding deficiencies in prior order dismissing claim with leave to amend); Noll  
26 v. Carlson, 809 F.2d 1446, 1448 (9th Cir. 1987) (pro se litigant must be given leave to amend his  
27 or her complaint unless it is absolutely clear that the deficiencies of the complaint could not be cured  
28 by amendment).

1 **IV. Conclusion and Order**

2 The Court finds that Plaintiff's first amended complaint fails to state any cognizable claims  
3 for relief. Plaintiff was provided with the opportunity to amend and his first amended complaint  
4 failed to remedy the deficiencies in his claims. The Court finds that the deficiencies in Plaintiff's  
5 claims are not curable by further amendment of his complaint. Accordingly, it is HEREBY  
6 ORDERED that Plaintiff's claims are DISMISSED, with prejudice, for failure to state a claim.

7  
8 IT IS SO ORDERED.

9 **Dated: November 15, 2010**

/s/ Sheila K. Oberto  
UNITED STATES MAGISTRATE JUDGE